

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:08-cv-03450-FMC-RCx	Date	August 26, 2008
Title	Kenneth Roy Koontz v. Starbucks Coffee International et al		

Present: The Honorable	FLORENCE-MARIE COOPER
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Alicia Mamer

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not present

Not present

Proceedings: ORDER DENYING MOTIONS (In Chambers)

The Court is in receipt of Plaintiff's Motion for Reconsideration (Docket No. 20) and Request for Default Judgment (Docket No. 21), filed August 14, 2008. The Court deems these matters appropriate for decision without oral argument. See Fed. R. Civ. P. 78(b); Local Rule 7-15. The hearing set for September 8, 2008, is removed from the Court's calendar. For the reasons and in the manner set forth below, Plaintiff's Motion for Reconsideration (Docket No. 20) is DENIED, and Plaintiff's Request for Default Judgment (Docket No. 21) is DENIED.

First, Plaintiff's arguments do not satisfy the standard for reconsideration. C.D. Cal. Local Rule 7-18 (requiring a showing of: (1) a material difference in fact or law from that previously presented to the Court that in the exercise of reasonable diligence could not have been known to the party at the time of such decision; (2) the emergence of new material facts or a change in law occurring after the Court has rendered its decision; or (3) a manifest showing of a failure to consider material facts presented to the Court). Even if Plaintiff was not properly served with Defendant's Motion to Dismiss, and even if the Motion did not bear defense counsel's signature, Plaintiff had actual notice of the Motion and filed an Opposition to the Motion, which the Court considered. See Docket No. 13 (July 22, 2008 Order on Late Filed Opposition to Motion to Dismiss). Accordingly Plaintiff's Motion for Reconsideration is DENIED.

Second, entry of default judgment is not warranted here because Defendants appeared when they filed their Motion to Dismiss on June 26, 2008. Plaintiff's First Amended Complaint ("FAC"), filed August 11, 2008, is now the operative pleading in this action. Defendants must respond to the FAC within 20 days of being served therewith. Fed. R. Civ. P. 12(a)(1)(A)(I). Accordingly, Plaintiff's Request for Default Judgment is DENIED because it is premature.

_____: N/A
Initials of Preparer AM

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